

Responsive and outward looking ICO consultations Policy

Please note that this policy is currently being reviewed and will be updated following review.

1.0 Introduction

- 1.1 The Information Commissioner's Office (ICO) is the UK's independent authority set up to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals. The ICO monitors and enforces in respect of the following legislation:
- Data Protection Act 2018;
 - The UK General Data Protection Regulation (UK GDPR);
 - Privacy and Electronic Communication Regulations 2003 (PECR);
 - Freedom of Information Act 2000 (FOIA);
 - Environmental Information Regulations 2004 (EIR);
 - Environmental Protection Public Sector Information Regulations 2009 (INSPIRE Regulations);
 - Re-use of Public Sector Information Regulations 2015;
 - Enterprise Act 2002;
 - Security of Network and Information Systems Directive (NIS Directive);
 - Electronic Identification, Authentication and Trust Services Regulation (eIDAS);
 - In addition, the ICO has a duty to audit compliance with the requirements or restrictions imposed by Part 4 of the Investigatory Powers Act 2016 in relation to the integrity, security or destruction of data retained by virtue of that Part.
- 1.2 This policy outlines how the ICO will run formal consultations with external stakeholders and members of the public.
- 1.3 This policy takes into account the principles contained within the [Government's Consultation Principles 2018](#).
- 1.4 The policy does not provide guidance on informal dialogue with external stakeholders that might take place to help inform corporate or policy developments.
- 1.5 ICO staff may be included among those being consulted, and of course can respond as members of the public to ICO consultations.

2.0 Why consult

- 2.1 Consultation is a two-way dialogue that allows stakeholders an opportunity to influence the decisions and practices of the ICO.
- 2.2 The ICO will ensure that consultations have a clearly defined and achievable purpose.
- 2.3 As a public body, it is important that the ICO conducts open and fair consultation with stakeholders. Consultations involve engaging external stakeholders in our work to support transparency. This helps to

strengthen the working relationship between the ICO and its stakeholders.

- 2.4 The ICO values consultation as an opportunity to deepen understanding on specific issues and take into account the views of stakeholders and the public. This enables the ICO to seek feedback on its understanding of issues and whether the proposed policy options are necessary or desirable.
- 2.5 Consultation also enables the ICO to identify reasonable and realistic expectations of stakeholders thus helping to improve its effectiveness as a regulator.

Statutory obligation

- 2.6 The DPA 2018 does not impose a general requirement on the Information Commissioner to publicly consult on all guidance, policies or codes produced.
- 2.7 There are specific requirements to consult set out in the DPA 2018. For example, in respect of Codes of Practice produced in accordance with sections 121¹, 122², 123³, 124⁴ and 128⁵ DPA 2018.
- 2.8 In addition, in accordance with section 160(9) DPA 2018 the Information Commissioner must consult the Secretary of State and such other persons as the Commissioner considers appropriate when producing and publishing guidance about regulatory action⁶.

3.0 When to consult

- 3.1 Consultations should be used when there is a need to consider the views and suggestions of stakeholders before a decision is taken about the approach and practices of the ICO.
- 3.2 Formal consultation is appropriate when the ICO has developed its analysis and evidence sufficiently to articulate the range of potential policy options.
- 3.3 A Call for Views or Call for Evidence can instead be used as part of the research and evidence gathering process to better understand the views of stakeholders. This will not constitute a formal consultation process under this policy.

¹ Section 121(3) DOA 2018

² Section 122(3) DPA 2018

³ Section 123(3) DPA 2018

⁴ Section 124(3) DPA 2018

⁵ Section 128(2) DPA 2018

⁶ Section 160(9) DPA 2018

- 3.4 A closed consultation is a more limited type of consultation involving a small group of experts on a particular topic. The appropriate time for a closed consultation may be during the scoping or drafting process, or as part of the product sign off.
- 3.5 Informal dialogue with stakeholders may take place before consultation to allow the ICO to obtain evidence and make an initial assessment of the issues that the consultation should address. Such engagement with stakeholders falls outside the scope of this policy.
- 3.6 In order to maintain political impartiality consultations should not be launched during pre-election periods, unless there are exceptional circumstances. If a consultation is ongoing at the time an election is called it should continue, but should not receive any additional promotion.

4.0 How to consult

4.1 **Process**

- 4.1.1 Every ICO consultation will involve the publication of relevant documents on the ICO and stakeholder consultation area of the ICO website.
- 4.1.2 The web page will provide enough information to ensure that those consulted understand the issues and are able to give informed responses.
- 4.1.3 There will be a clear explanation of what the consultation is designed to address and what documents or processes it is intended to replace or update. The consultees will be made aware that the consultation process is the opportunity for them to give their view on the substance of the approach to be adopted by the Information Commissioner.
- 4.1.4 The web page will include instructions on how to respond, the closing date of the consultation and will include a privacy statement.
- 4.1.5 The consultation methods selected will be appropriate for the subject being consulted on and will be cost effective. They may include written or email responses to questions, focus groups, the use of online consultation software or telephone discussion. Consideration will be given to the risk of technical difficulties when using online consultation software and consultees will be informed that responses may alternatively be submitted in word copy.
- 4.1.6 Consideration will be given to the nature of the questions posed in the consultation. A proportionate number of substantive questions will be asked giving consultees an opportunity to (i) comment on whether they agree with the approach suggested (ii) highlight any concerns (iii) suggest any alternative approaches.

- 4.1.7 Consideration will be given to the word limits available to respondents when formulating their responses and whether this is reasonable based on all the circumstances of the specific consultation. Space will be provided for consultees to make free text comments.
- 4.1.8 ICO consultations will be open to anyone wanting to take part; however, there may be a need to target specific groups and sectors. The ICO will be proactive and flexible in communicating how individuals and organisations can share their views and in disseminating consultation documents.
- 4.1.9 Consultations will be publicised widely and key stakeholders should be directly approached for responses.

4.2 **Duration**

- 4.2.1 ICO consultations will last for a proportionate period of time in accordance with the Government's Consultation Principles 2018. Consultations will usually be between 6 and 12 weeks. The consultation's closing date will be communicated, as well as the projected date for the final outcome or any subsequent developments.
- 4.2.2 The length of the consultation period may be increased or decreased depending on the nature of the consultation, and other considerations such as holiday periods, emergency measures and legally-binding deadlines.
- 4.2.3 The consultation paper will seek to highlight any reasons for a shorter consultation period being adopted. The ICO will also consider how they can maximise the opportunities for stakeholders to take part during any shorter timeframe.

4.3 **Accessibility**

- 4.3.1 Any publication or correspondence produced by the ICO must comply with any ICO policies in relation to accessibility or translation. For example, the ICO [Reasonable Adjustment Policy](#).

4.4 **Treatment of responses**

- 4.4.1 Instructions on how to respond to the consultation will be included.
- 4.4.2 When a response is submitted electronically, an acknowledgement will usually be sent by electronic means.
- 4.4.3 The Consultation will set out details of how responses will be published and the intended timeframe. For example, this may be a summary of the responses or responses with the name of the person and/or organisation which gave the response removed. If we may publish responses we will give responders the option not to have their response published. We will make it clear if we intend to share

responses with (for example) government departments, and the form those responses will be shared.

- 4.4.4 Responses will be treated fairly and objectively. The ICO is prepared to act where evidence is sufficient enough to warrant change.

4.5 **Privacy**

- 4.5.1 A privacy statement will be included in all consultation documents.

4.6 **Evaluation**

- 4.6.1 After a consultation has closed, the ICO will evaluate how successful the exercise was, considering the methods employed and the response rate. Any lessons that can be learned will then be incorporated into this document.